

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket No. 50-322-OL
LONG ISLAND LIGHTING COMPANY	)	
	)	(Emergency Planning -
(Shoreham Nuclear Power Station,	)	Phase 1)
Unit 1)	)	

LILCO'S MOTION TO STRIKE  
PORTIONS OF THE DIRECT TESTIMONY OF  
FRED C. FINLAYSON

LILCO hereby moves to strike portions of the Direct Testimony of Fred C. Finlayson on behalf of Suffolk County Regarding Contention EP 14, Accident Assessment and Dose Assessment Models. LILCO moves to strike lines 19-24 of page 8, pages 9-20, lines 12-24 on page 22, lines 1-9 and the first three words of line 10 on page 23, pages 24-26, the first five lines of page 27, and line 10 on page 27 through line 13 on page 28 (the PRA testimony) because they are outside the scope of contention EP 14. LILCO moves to strike lines 11-24 of page 5, pages 6-7, lines 1-18 of page 8, and lines 6-9 of page 27 (the Gaussian plume testimony) because they deal with a subject outside the witness's expertise.

PRA Testimony

Much of Dr. Finlayson's testimony is outside the scope of EP 14. Under the NRC rules of practice, testimony must be

relevant to the issues in the contention. 10 C.F.R. § 2.743(c).<sup>1/</sup> And irrelevant testimony is the proper subject of a motion to strike. See 10 C.F.R. Part 2, Appendix A, V(d)(7). The Board has the power to implement these provisions, both through its general power to regulate the conduct of a hearing, 10 C.F.R. § 2.718, and through the specific authority under 10 C.F.R. § 2.757(b) to strike argumentative, repetitious, cumulative or irrelevant evidence. Accordingly, LILCO moves to strike the parts of Dr. Finlayson's testimony specified above.

The basis for this motion to strike is the Board's Prehearing Conference Order (Phase I -- Emergency Planning) dated July 27, 1982, at 18-21, where the Board ruled in part as follows:

We therefore do not see the need to litigate LILCO's PRA in these circumstances, unless LILCO attempts to rely upon its PRA in either its direct or rebuttal testimony on this contention.

. . . Therefore, if LILCO can make its case using only evidence of "other means" used to ensure the accuracy of its assessment models, we see no reason to litigate LILCO's PRA in this context, unless LILCO intends to rely on it.

---

<sup>1/</sup> Title 10 C.F.R. § 2.743(c) says this:

Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.

LILCO has not attempted to rely on its PRA in its testimony, and therefore evidence on the PRA is outside the scope of this contention.

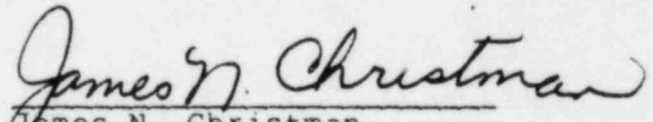
Accordingly, the County's testimony on EP 14 attempts to do precisely what the Board ruled in its July 27 order should not be done, that is, to litigate a PRA on which LILCO does not rely in its emergency planning. For this reason, the portions of Dr. Finlayson's testimony cited above should be stricken.

Gaussian Plume Testimony

The other cited portions of Dr. Finlayson's testimony should be stricken because they deal with the adequacy of "straight-line trajectory, Gaussian dispersion methods" for predicting cloud motions. As far as we can tell, Dr. Finlayson's resume (Attachment 1 to his testimony) does not reveal that he is qualified to assess different types of plume models, and therefore the "Gaussian plume" portions of his testimony should be stricken.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

By   
James N. Christman

Hunton & Williams  
P.O. Box 1535  
707 East Main Street  
Richmond, VA 23212

DATED: November 9, 1982

CERTIFICATE OF SERVICE

In the Matter of  
LONG ISLAND LIGHTING COMPANY  
(Shoreham Nuclear Power Station, Unit 1)  
Docket No. 50-322 (OL)

I hereby certify that copies of LILCO's Motion to Strike Portions of the Direct Testimony of Fred C. Finlayson were served upon the following by first-class mail, postage prepaid, by Federal Express (as indicated by an asterisk), or by hand (as indicated by two asterisks), on November 9, 1982:

Lawrence Brenner, Esq.\*\*  
Administrative Judge  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. Peter A. Morris\*\*  
Administrative Judge  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. James H. Carpenter\*\*  
Administrative Judge  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Secretary of the Commission  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Atomic Safety and Licensing  
Appeal Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Daniel F. Brown, Esq.  
Attorney  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Bernard M. Bordenick, Esq.\*\*  
David A. Repka, Esq.  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Herbert H. Brown, Esq.\*\*  
Lawrence Coe Lanpher, Esq.  
Karla J. Letsche, Esq.  
Kirkpatrick, Lockhart, Hill,  
Christopher & Phillips  
8th Floor  
1900 M Street, N.W.  
Washington, D.C. 20036

Mr. Mark W. Goldsmith  
Energy Research Group  
4001 Totten Pond Road  
Waltham, Massachusetts 02154

MHB Technical Associates  
1723 Hamilton Avenue  
Suite K  
San Jose, California 95125

Mr. Jay Dunkleberger  
New York State Energy Office  
Agency Building 2  
Empire State Plaza  
Albany, New York 12223

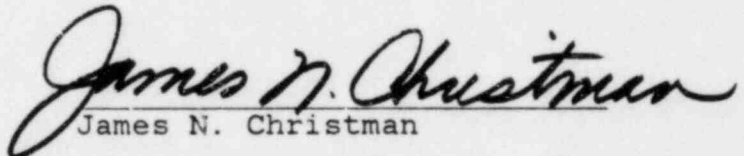
David J. Gilmartin, Esq.  
Attn: Patricia A. Dempsey, Esq.  
County Attorney  
Suffolk County Department of Law  
Veterans Memorial Highway  
Hauppauge, New York 11787

Stephen B. Latham, Esq.\*  
Twomey, Latham & Shea  
33 West Second Street  
P. O. Box 398  
Riverhead, New York 11901

Ralph Shapiro, Esq.\*  
Cammer and Shapiro, P.C.  
9 East 40th Street  
New York, New York 10016

Howard L. Blau, Esq.  
217 Newbridge Road  
Hicksville, New York 11801

Matthew J. Kelly, Esq.  
State of New York  
Department of Public Service  
Three Empire State Plaza  
Albany, New York 12223

  
James N. Christman

Hunton & Williams  
707 East Main Street  
P.O. Box 1535  
Richmond, Virginia 23212

DATED: November 9, 1982